

REMARKS

This Amendment is submitted in response to the non-final Office Action mailed on August 18, 2009. No fees are due herewith. The Director is authorized to charge any fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3714652-00511 on the account statement.

Claims 38-49, 52-53, 55 and 58-71 are pending in this application. Claims 1-37, 50-51 and 54-57 were previously canceled. Claims 38-47 and 61-71 were previously withdrawn. In the Office Action, Claims 58-59 are rejected under 35 U.S.C. §112. Claims 48-49, 52-53 and 58-59 are rejected under 35 U.S.C. §102 and Claims 48-49, 52-53, 55 and 58-60 are rejected under 35 U.S.C. §103. In response, Claim 48 has been amended. The amendments do not add new matter and are supported, for example, at page 10, lines 25-35 of Applicants' specification. In view of the amendment and/or for at least the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 58-59 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claim 58, which depends from Claim 55, states, "wherein the fat transportation agent has a fatty acid profile specially-selected to improve absorption," while Claim 59 states, "wherein the fatty acid profile is polyunsaturated." Specifically, the Patent Office states that the whey protein and protease recited in Claim 55 do not have a 'polyunsaturated' or a 'fatty acid' profile nor does the instant specification teach that they improve absorption, but rather that they 'help the formation of lipoproteins.' The Office Action further asserts that the instant specification does not teach that fish oil, prebiotics, probiotics, etc. improve absorption and that polyunsaturates such as fish oils enhance absorption. See, Office Action, page 3, lines 3-11. Applicants respectfully disagree and submit that the instant specification provides clear support for the rejected claims.

Claim 55, for which Claim 58 depends, recites a regimen according to Claim 48 wherein the intestinal mucosa function-promoter further comprises a fat transportation agent selected from the group consisting of whey protein and proteases having the capacity to promote the formation of lipoproteins. Page 7, lines 1-4 of Applicants' specification state, "the intestinal mucosa function-promoter includes a fat transportation aid, agent or carrier. The aid, agent or carrier is preferably selected from whey protein and proteases having the capacity to promote the

formation of lipoproteins.” Applicants’ specification clearly supports Claim 55, for which Claim 58 depends.

Claim 58 recites a regimen according to Claim 55 wherein the fat transportation agent has a fatty acid profile specially-selected to improve absorption. Page 7, lines 10-11 of Applicants’ specification state: “the fat transportation aid, agent or carrier has a fatty acid profile specially selected to improve absorption of lipid by the pet ingesting it.” Applicants’ specification, therefore, clearly supports Claim 58.

Claim 59, which depends from Claim 58, recites a regimen according to Claim 58 wherein the fatty acid profile is polyunsaturated. Page 7, lines 11-12 of Applicants’ specification state, “The fatty acid profile is preferably polyunsaturated.” Like Claims 55 and 58, Applicants’ specification provides clear support for Claim 59 as well.

Applicants submit, therefore, that Claims 58-59 contain subject matter described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Therefore, Applicants respectfully submit that Claims 58-59 fully comply with the requirements of 35 U.S.C. §112, first paragraph.

Accordingly, Applicants respectfully request that the rejections of Claims 58-59 under 35 U.S.C. §112, first paragraph, be reconsidered and withdrawn.

In the Office Action, Claims 48-49, 52-53 and 58-59 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,759,933 to Uchida (“*Uchida*”). Independent Claim 48 has been amended to recite, in part, a nutrition management regimen comprising a dietary component comprising a first pancreatic function promoter, a second pancreatic function promoter, and an intestinal mucosa function-promoter in an amount effective to maintain, promote or enhance the capacity of the pet to digest lipid, wherein the intestinal mucosa function-promoter comprises an about 3% to about 12% omega-3 fatty acid derived from fish oils and about 6% to 16% of an anti-inflammatory agent. The amendment is supported in Applicants’ specification, for example, at page 10, lines 25-35.

Applicants have found that by incorporating an intestinal function-promoter and an anti-inflammatory agent as provided in the claims, the dietary component can provide a fatty acid group having a suitable absorption-enhancing profile. See, Applicants’ specification, page 10, lines 21-27. Applicants have further found that a pet, such as a cat, which consumes a diet having this dietary component, can digest a significantly higher percentage of fat compared to a

control diet, can have improved total energy digestibility, can have an improved organic matter digestibility, required lower amounts of diet compared to a control diet, and appear to maintain its weight better than a pet fed the control diet. See, Applicants' specification, page 21, lines 1-16. As such, Applicants submit that *Uchida* fails to disclose or suggest every element of the present claims.

Applicants respectfully submit that *Uchida* fails to disclose or suggest a dietary component comprising an intestinal mucosa function-promoter in an amount effective to maintain, promote or enhance the capacity of the pet to digest lipid, wherein the intestinal mucosa function-promoter comprises about 3% to about 12% of an omega-3 fatty acid derived from fish oils and about 6% to 16% of an anti-inflammatory agent as required, in part, by independent Claim 48. In fact, *Uchida* fails to disclose any levels of fish oil or any levels of anti-inflammatory agents.

Though *Uchida* is directed to a protein food including fish meat, *Uchida* clearly separates use of fish meat from the use of fish oil, stating, "this invention is a method for preparing protein food products or protein food materials in a paste state which is characterized by grinding fish meat and... if necessary, adding one or more selected sources of vegetable and/or animal protein food sources, vegetable and/or animal fats and oils sources." See, *Uchida*, column 1, line 67 to column 2, line 10. *Uchida* then provides fish oil as an example of a "vegetable and/or animal fat" but does not disclose or suggest a usage level and does not describe addition of fish oil to the fish meat in any of the 33 provided examples. Applicants submit, therefore, that *Uchida* fails to disclose or suggest every element of the present claims.

For at least the reasons discussed above, Applicants respectfully submit that independent Claim 48, and Claims 49, 52-53 and 58-59 that depend from Claim 48, are novel, nonobvious and distinguishable from *Uchida* and are in condition for allowance. Applicants accordingly request that the anticipation rejection of Claims 48-49, 52-53 and 58-59 be reconsidered and withdrawn.

In the Office Action, Claims 48-49 and 52-53 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Publication No. 2002/0119237 to Hevey ("*Hevey*") in view of *Uchida*. Applicants submit that the cited references, alone or in combination, fail to disclose or suggest every element of the present claims.

Hevey fails to disclose or suggest a dietary component comprising an intestinal mucosa function-promoter in an amount effective to maintain, promote or enhance the capacity of the pet

to digest lipid, wherein the intestinal mucosa function-promoter comprises about 3% to about 12% of an omega-3 fatty acid derived from fish oils and about 6% to 16% of an anti-inflammatory agent as required, in part, by independent Claim 48. Instead, *Hevey* teaches *Lactobacillus acidophilus*, *Lactobacillus rhamnosus*, *Enterococcus faecium*, *Lactobacillus helveticus*, *Lactobacillus plantarum*, Maltodextrin and Ascorbic Acid having a combined level of 1%, which is clearly below either of the percentages recited in the claims. See, *Hevey*, paragraph [0060] (Table 4).

Uchida also fails to disclose or suggest a dietary component comprising an intestinal mucosa function-promoter in an amount effective to maintain, promote or enhance the capacity of the pet to digest lipid, wherein the intestinal mucosa function-promoter comprises about 3% to about 12% of an omega-3 fatty acid derived from fish oils and about 6% to 16% of an anti-inflammatory agent as required, in part, by independent Claim 48. As summarized above, *Uchida* fails to disclose any levels of fish oil or any levels of anti-inflammatory agents. Therefore, *Uchida* fails to remedy the deficiency of *Hevey*.

Applicants submit, therefore, that *Hevey* and *Uchida*, alone or in combination, fail to disclose or suggest every element of independent Claim 48 and Claims 49 and 52-53 that depend from Claim 48.

Also in the Office Action, Claims 48-49, 52-53, 55 and 58-60 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,210,718 to Ivey et al. ("*Ivey*"). Applicants submit that the cited reference fails to disclose or suggest every element of the present claims.

Ivey fails to disclose or suggest a dietary component comprising an intestinal mucosa function-promoter in an amount effective to maintain, promote or enhance the capacity of the pet to digest lipid, wherein the intestinal mucosa function-promoter comprises about 3% to about 12% of an omega-3 fatty acid derived from fish oils and about 6% to 16% of an anti-inflammatory agent as required, in part, by independent Claim 48. Like *Hevey*, *Ivey* fails to provide any composition percentages of any arguable anti-inflammatory ingredients provided therein. For example, column 8, lines 38-62 list a multitude of lactic acid bacteria strains and a general amount of colony forming units of bacteria/yeast per gram of composition, but fail to provide any teaching as to composition percentages of those ingredients.

Applicants respectfully submit, therefore, that *Ivey* fails to disclose or suggest every element of independent Claim 48 and Claims 49, 52-53, 55 and 58-60 that depend from Claim 48.

In the Office Action, Claims 48-49, 52-53, 55 and 58-60 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,471,999 B2 to Couzy et al. ("*Couzy*") in view of EP 1048226 to Kratky et al. ("*Kratky*") and U.S. Patent No. 6,576,667 to Strohmaier et al. ("*Strohmaier*"). Applicants respectfully submit that the cited references, alone or in combination, fail to disclose or suggest every element of the rejected claims.

Couzy fails to disclose or suggest an intestinal mucosa function-promoter in an amount effective to maintain, promote or enhance the capacity of the pet to digest lipid, wherein the intestinal mucosa function-promoter comprises about 3% to about 12% of an omega-3 fatty acid derived from fish oils and about 6% to 16% of an anti-inflammatory agent as required, in part, by independent Claim 48. *Couzy* is directed to a milk-based pet food powder, with milk powder contributing between 96% and 97% of the composition. See, *Couzy*, Abstract and Examples 1 and 2. Moreover, of the remaining 3-4% of the composition, *Couzy* fails to disclose or suggest any omega-3 fatty acid derived from fish oils or any ingredient percentages for any anti-inflammatory agent.

Kratky fails to remedy the deficiencies of *Couzy*. *Kratky*, which is directed to an infant formula containing a lipid source, a carbohydrate source, and a protein source with free amino acids and a hydrolysed sweet whey fraction, fails to disclose or suggest any anti-inflammatory agent, particularly an agent comprising about 6% to 16% of the infant formula. See, *Kratky*, Abstract.

Strohmaier also fails to remedy the deficiencies of *Couzy*. *Strohmaier* teaches using about 15-50% fish oil and about 50-85% fatty acid feedstock in its fatty acid calcium salt. See, *Strohmaier*, column 4, lines 21-32. Since these are the primary, if not the only, ingredients in the fatty acid calcium salt, *Strohmaier* is essentially teaching a 100% fat composition. Moreover, both the fish oil and fatty livestock percentages are clearly above the about 3% to about 12% omega-3 fatty acid derived from fish oils recited in the claims. Furthermore, *Strohmaier* fails to disclose or suggest about 6% to 16% of an anti-inflammatory agent as required by the claims. Therefore, *Strohmaier* fails to remedy the deficiencies of *Couzy*.

Applicants submit, therefore, that *Couzy*, *Kratky* and *Strohmaier*, alone or in combination, fail to disclose or suggest every element of independent Claim 48 and Claims 49, 52-53, 55 and 58-60 that depend from Claim 48.

Accordingly, Applicants respectfully request that the rejections of Claims 48-49, 52-53, 55 and 58-60 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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